Supreme Court, U.S.
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No. 97-1446

In The

Supreme Court of the United States

October Term, 1997

JOSE M. BAEZA, JR. and GONZALEZ TRADING, INC.,

Petitioners,

vs.

NACCO INDUSTRIES, INC., JAMES S. FELTMAN and YALE MATERIALS HANDLING CORPORATION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the district court correctly dismissed a collateral action brought against a judgment creditor and a court-appointed receiver who seized, pursuant to district court orders and judgments that Petitioners claim to be invalid, property fraudulently transferred to one of the Petitioners, where the validity of those orders and judgments previously had been directly challenged unsuccessfully by Petitioners.

PARTIES TO THE PROCEEDING

The parties to the proceeding are as follows: The petitioners are Jose M. Baeza, Jr. and Gonzalez Trading, Inc. The respondents are NACCO Industries, Inc., Yale Materials Handling Corporation and James S. Feltman.

Respondent NACCO Industries, Inc. is the parent company of respondent Yale Materials Handling Corporation.

Yale Materials Handling Corporation has the following nonwholly owned subsidiaries: Sumitomo-Yale Company, Ltd., Shanghai Hyster Forklift Truck Company, Ltd., Hyster New England, Inc. and NACCO Materials Handling S.R.L.

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OPINION BELOW

The unreported opinion of the United States District Court for the Southern District of Florida, entered on March 16, 1996, is reproduced in Petitioners' appendix at pages A1-A18. The district court's judgment was affirmed by the United States Court of Appeals for the Eleventh Circuit without opinion on September 3, 1997. (*See* Pet. App. at B1.)

STATEMENT OF THE CASE

Petitioners Jose M. Baeza, Jr. (Baeza Jr.) and Gonzalez Trading, Inc. (Gonzalez) seek to have this Court reverse the dismissal of their lawsuit by the district court. The case is so patently frivolous that the district court entered sanctions against Petitioners and their counsel under Fed. R. Civ. P. 11, and the Eleventh Circuit separately granted sanctions against them for pursuing a frivolous appeal.

Petitioners brought this case for damages allegedly arising from the seizure of a 43' Bertram Yacht, named the "Pit Bull," in Puerto Rico in December 1994. The yacht was seized pursuant to orders entered by both the District Court for the Southern District of Florida and the District Court for Puerto Rico to satisfy judgments in favor of respondent Yale Materials Handling Gorporation (Yale). Those judgments reflected, *inter alia*, the setting aside of a fraudulent transfer of the yacht from another related judgment debtor.

The only purported justification for Petitioners' lawsuit — one that has been rejected many times by the district court and the court of appeals — is that the judgments and orders leading to the seizure of the yacht were invalid for jurisdictional reasons.[1]

1. Those judgments and orders were entered in a separate action, referred to herein as "the GTI litigation."

If Petitioners' objections to those judgments and orders were valid, which they are not, the appropriate remedy would be an appeal, not a collateral lawsuit. The district court and the court of appeals were correct in summarily rejecting this frivolous lawsuit, and there is no conceivable reason that this Court should entertain the case.

A. Yale Obtains Judgments in a Dealer Termination Dispute.

A brief history of the GTI litigation is useful to understand the lengths to which Petitioners have gone to defy the judgments against them and persons related to them.

The GTI litigation began in 1987 as a termination dispute between Yale, a manufacturer of forklift trucks, and General Trading, Inc. (GTI), its former south Florida dealer, following Yale's discovery of repeated acts of fraud by GTI. Yale also asserted counterclaims against GTI's president, Jose M. Baeza, Sr. (Baeza Sr.), his two sons, Javier Baeza and Baeza Jr., and the Baezas' Puerto Rico company, Gonzalez, for fraudulent conveyances to avoid Yale's security interests and for damages under various theories.[2]

A bench trial was held before District Judge Scott for 13 trial days over five separate sessions during the summer of 1990. In August 1990, with less than one day of trial remaining, Judge Scott *sua sponte* continued the trial to an undetermined later date and then abruptly resigned from the bench. When the case eventually was transferred to District Judge William J. Zloch, Petitioners' trial counsel proposed completion of the trial before a magistrate judge, and all parties readily consented.

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2. GTI, Baeza Sr., Javier Baeza, Baeza Jr. and Gonzalez are sometimes referred to herein as "counterdefendants."

The trial was resumed before Magistrate Judge Bandstra on February 10, 1992. At its conclusion, Yale was awarded a judgment in the amount of $1,119,612 on its counterclaims against GTI and Baeza Sr., and GTI was awarded a judgment against Yale on a bankruptcy issue (which now has been reversed by the court of appeals). GTI and Baeza Sr. at first appealed the magistrate judge's decision on the merits, but they later abandoned any challenge to that decision.

After entry of judgment on the merits, Yale, GTI and Baeza Sr. filed motions seeking attorneys' fees. On October 18, 1993, the magistrate judge issued an order awarding Yale its attorneys' fees and costs. GTI and Baeza Sr. did not seek appellate review of that judgment.

Yale's efforts to execute on its judgments soon revealed that Baeza Sr., with the assistance of his family, was engaged in an effort to make himself and GTI judgment proof. Supplemental proceedings in aid of execution were pursued in the trial court, and the magistrate judge impleaded supplemental defendants Michele M. Baeza, Encarnacion Gonzalez and Power Depot, Inc. (Power Depot).[3] After conducting a lengthy evidentiary hearing, Magistrate Judge Bandstra entered, on February 25, 1994 and April 12, 1994, an opinion and final judgments in favor of Yale and set aside various fraudulent transfers that had been made to Baeza Jr., Gonzalez, Javier Baeza, Michele Baeza and Encarnacion Gonzalez. Among the transfers set aside and voided by the magistrate judge was Baeza Sr.'s delivery of his 43' Bertram yacht to his son, Baeza Jr. None of the parties challenged those judgments for Yale on appeal.

In addition to setting aside the counterdefendants' fraudulent transfers, the Magistrate Judge's February 25, 1994 Order also

3. Michele Baeza, Encarnacion Gonzalez and Power Depot are sometimes referred to herein as the "transferees."

granted Yale's motion for the appointment of a Receiver for the purpose of taking "custody, control and possession of the real and personal property identified as recoverable by Yale or subject to its liens. . . ." Expressly included in such property was the Bertram yacht transferred by Baeza Sr. to Baeza Jr.

After the entry of the magistrate judge's decision in the supplementary proceedings, virtually all of the counterdefendants and transferees fired their former counsel and engaged various new counsel. Contradicting their earlier representations, all of these parties filed motions contending, for the first time, that they had not consented to anything that would have permitted the entry of the magistrate judge's final judgment on the merits, the final judgment on attorneys' fees and costs, the final judgments in the supplementary proceedings or any other order.

The motions were denied by the magistrate judge, and later by the district court, and the counterdefendants and transferees appealed. The Eleventh Circuit consolidated all of the pending appeals and entered its decision on August 22, 1997. On the consent issue, the court of appeals stated:

> After carefully reviewing the record, we readily conclude that there is ample evidence that GTI, Baeza, Sr., Gonzalez Trading, and Baeza, Jr. explicitly and unambiguously consented to appear before the magistrate judge.

General Trading, Inc. v. Yale Materials Handling Corp., 119 F.3d 1485, 1495 (11th Cir. 1997).

The court of appeals similarly had no trouble finding that the transferees had consented through their filing of a formal, written acceptance of judgment. The court of appeals found

that these parties' express consent was "[c]learly encompassed" in the acceptance of judgment. 119 F.3d at 1496.

The Eleventh Circuit's decision in the GTI litigation was the subject of a petition for a writ of certiorari in Case No. 97-1239, which was denied on March 30, 1998.

B. The Receiver Takes Possession of the "Pit Bull."

In December 1994, after months of searching, the Receiver located Baeza Sr.'s yacht in Puerto Rico. The name and the hull identification number had both been changed in an effort to hinder the Receiver. The Receiver filed a motion in the United States District Court in Puerto Rico requesting authorization to seize the vessel. The district court granted the motion on December 16, 1994, and the Receiver took possession of the yacht the following day. *See General Trading, Inc. v. Yale Materials Handling Corp.*, 1995 U.S. App. LEXIS 26348 (1st Cir. 1995).

On December 29, 1994, Baeza Jr. and Gonzalez filed in the District of Puerto Rico a "Petition to Enjoin Illegal Acts and to Vacate Order," seeking to vacate that district court's December 16 order permitting seizure. In that motion, Baeza Jr. and Gonzalez claimed, among other things, that the judgments issued by the Southern District of Florida were invalid because all of the parties had not consented to the authority of the magistrate judge to preside over the case. That motion was denied by the district court, and Baeza Jr. and Gonzalez appealed.

On September 18, 1995, the United States Court of Appeals for the First Circuit dismissed as untimely Baeza Jr. and Gonzalez's appeal from the order permitting seizure. No petition was filed for a writ of certiorari, and the mandate issued.

Therefore, any questions that were or could have been raised concerning the validity of the order by the federal district court in Puerto Rico authorizing seizure of the yacht in Puerto Rico have been fully litigated.[4]

C. Petitioners Sue Yale, the Receiver and NACCO.

Despite their pending challenges to the district court's order permitting seizure of the Pit Bull in both the Southern District of Florida and the District of Puerto Rico, Baeza Jr. and Gonzalez filed, on January 5, 1995, the lawsuit that is the subject of the current appeal. The complaint appeared to assert six causes of action: (1) abuse of process; (2) intentional infliction of emotional distress; (3) defamation; (4) violation of the United States Constitution; (5) declaratory judgment; and (6) claim for attorneys' fees. The complaint was transferred to the Southern District of Florida and was dismissed by the district court on March 13, 1996.

REASONS FOR DENYING THE WRIT

Petitioners raise no issue worthy of consideration by this Court. This case presents neither a conflict of federal law nor an important jurisprudential issue.

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4. Petitioners have submitted, as Appendix D, a copy of a transcript of testimony by the Receiver that they claim supports their objections to seizure of the yacht. The testimony was taken during contempt proceedings against Petitioners in the GTI litigation. It has no relevance to, and is not a part of the record in, the present case.

I.

PETITIONERS' OBJECTIONS TO JUDGMENTS ENTERED IN THE GTI LITIGATION CANNOT BE ADJUDICATED IN THIS ACTION.

The only argument presented by Petitioners in favor of a writ is that the judgments in the GTI litigation are invalid, and therefore the district court was incorrect in relying on the doctrine of *res judicata* in dismissing their lawsuit. They completely overlook the *res judicata* impact of the dismissal of their own First Circuit appeal from the seizure order. Moreover, despite repeated admonitions by the lower courts, including the imposition of Rule 11 sanctions, Petitioners persist in the mistaken belief that they are entitled to re-litigate issues relating to the validity of the judgments against them in this separate lawsuit.

Petitioners do not challenge the district court's formulation of the three-part test for determining whether a claim is barred by the doctrine of *res judicata*. *See United States v. Timmons*, 672 F.2d 1373, 1377 (11th Cir. 1982). Indeed, Petitioners do not even contest the district court's application of that test, other than to restate their arguments that the underlying judgments were invalid. However, Petitioners' claims that the judgments were invalid, based on their erroneous belief that the magistrate judge lacked jurisdiction in the GTI litigation, were among the issues adjudicated in the GTI litigation itself.

At bottom, Petitioners' argument is that, even where a district court correctly applies the doctrine of *res judicata*, a plaintiff should be entitled to maintain a duplicative lawsuit based solely on its belief that the first judgment against it was invalid. Petitioners cite no authority for this novel proposition, and there is none.

Nevertheless, Petitioners claim that the lower court's decision conflicts with three cases decided by this Court.[5] Each of those cases involved jurisdiction issues that have nothing to do with the present case. In no sense do they conflict with, or even relate to, the grounds for dismissal of Petitioners' complaint.

In *Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan*, 111 U.S. 379 (1884), the Court vacated the judgment below and ordered the case remanded to state court on the ground that it had been improperly removed by non-diverse parties. Here, there was no removal from state court, and there was no challenge to the district court's jurisdiction. There is no conflict between the lower court's decisions and *Mansfield*.

Petitioners also cite, but do not discuss, *Caterpillar v. Lewis*, __ U.S. __, 117 S. Ct. 467 (1996), another case addressing the propriety of a removal from state court. *Caterpillar* does not conflict with, and has no relevance to, the lower court's decisions here.

Finally, in their second issue presented (Pet. at 2), Petitioners inexplicably cite *Bell v. Hood*, 327 U.S. 678 (1946). In *Bell*, the Court held that a federal court had jurisdiction over an action arising under the Fourth and Fifth Amendments to the United States Constitution. Again, the case has no relevance since the jurisdiction of the district court in this action has never been challenged.

In summary, Petitioners argue that they should be entitled to ignore principles of *res judicata*, but they cite no authority supporting their position, nor do they explain why such a

5. Petitioners cite three supposedly "conflicting" cases in their "Issues Presented" (Pet. at 2), but in their argument they discuss only one of those cases.

departure from settled law is warranted in this case. In fact, Petitioners do nothing more than reargue their claims, which have been heard and rejected in the GTI litigation, that they did not consent to proceeding before the magistrate judge. The arguments do not come close to presenting an issue worthy of this Court's attention.

II.

THE DISTRICT COURT PROPERLY DISMISSED PETITIONERS' COMPLAINT FOR FAILURE TO STATE A CLAIM.

In addition to finding Petitioners' claims barred by the doctrine of *res judicata*, the district court analyzed each of Petitioners' causes of action, applied the relevant legal principles and determined that Petitioners' complaint should be dismissed under Fed. R. Civ. P. 12(b)(6). Petitioners have not bothered to address this separate, independently dispositive, basis for dismissal of their complaint.

Therefore, even if the Court were inclined to entertain Petitioners' arguments concerning *res judicata*, the issue would be moot because Petitioners failed to allege any cognizable claim under applicable law, and their complaint properly was dismissed on that basis.

CONCLUSION

The case does not present a conflict with a decision of any other court of appeals or of this Court. It does not involve any question of jurisprudential significance. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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